

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BARRY FOREMAN,)
)
)
Plaintiff,)
)
)
v.)
)
)
AARON MOORE, et al.,)
)
)
Defendants.)

ORDER

Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging violation of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin for preliminary review. On September 16, 2015, Judge Erwin issued a Report and Recommendation wherein he recommended that the action be summarily dismissed. The matter is currently before the Court on Plaintiff's timely objection to the Report and Recommendation, which gives rise to the Court's obligation to conduct a *de novo* review of any portion of the Report and Recommendation to which Plaintiff makes specific objection. Having conducted this *de novo* review, the Court finds as follows.

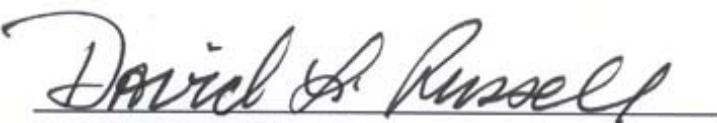
In the Report and Recommendation Judge Erwin recommends summary dismissal because Plaintiff is asserting that his constitutional rights were violated with regard to certain criminal charges pressed against him in the District Court of Garfield County. Judge Erwin concluded that Plaintiff was attempting to challenge convictions in state court via a § 1983 action, which is precluded by *Heck v. Humphrey*, 512 U.S. 477 (1994). That is, because relief

in his favor would imply the invalidity of his convictions, Plaintiff's claims are not cognizable at this time. Judge Erwin further recommended that the Court not construe the action as a petition for habeas corpus relief.

In his objection Plaintiff complains that his rights are being violated by virtue of his convictions. However, he does not address the relevant authorities cited by Judge Erwin. The fact that Plaintiff cannot utilize this civil action to challenge his convictions does not, as he argues, deprive him of the ability to raise the issues he seeks to pursue. He is currently seeking appellate review for both his felony and misdemeanor convictions in the Oklahoma Court of Criminal Appeals, and should he fail to obtain relief, he may pursue state and federal habeas corpus proceedings. Plaintiff, however, may not proceed with his claims in this forum at this juncture under § 1983.

For the reasons set forth above and in the Report and Recommendation, this action is hereby DISMISSED without PREJUDICE. The Report and Recommendation is hereby ADOPTED in its ENTIRETY. Plaintiff's pending motions are hereby DENIED.

IT IS SO ORDERED this 20th day of November, 2015.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE